

TARTESSO 1261, L.L.C.
6720 N. SCOTTSDALE ROAD, SUITE 220
SCOTTSDALE, ARIZONA 85253

ABC Contractor
123 Main Street
Phoenix, AZ 85000

Page 1 of
Date: _____, 2016
Contractor's License No.: _____
Contractor's Sales Tax No.: _____
Contractor's Fed. I.D. No.: _____

The undersigned Contractor hereby proposes to furnish, at its own cost and expense, all labor, materials, tools, equipment and facilities necessary to do and fully complete the "Work" as specified in Schedule "A", Schedule "B", Schedule "C", and all Bid Addenda attached hereto and incorporated herein, for and on behalf of Tartesso 1261, L.L.C. (herein called "Owner"). The work will be performed on the real property described in Schedule "A", herein called the "Property" or "Project".

The Work is to be fully completed and delivered to Owner according to the terms and conditions of this contract (hereinafter referred to as "Contract"), including those stipulated on pages 1 through 12 and, Schedule "A", Schedule "B", Schedule "C", and all Bid Addenda attached to and incorporated into this Contract, for all purposes. Owner shall pay for the Work, after acceptance of the Work by Owner, according to the Contract Amount stated in Section 32 (hereinafter also referred to as the "Draw Amounts"). The total Draw Amounts shall be the Contract price to be paid by Owner for the completion of the Work by Contractor.

1. Payments and Liens. Payment of Draw Amounts under this Contract shall be made by Owner on approximately the 20th of the month for Work completed by the last day of the previous month, subject to the terms and requirements of this Section 1, the fulfillment of which shall be conditions precedent to Owner's obligation to make any payments to Contractor.

Contractor's progress payment applications shall be delivered to Owner on the first (1st) day of each month; provided, however, that if such first day of the month is a Saturday, Sunday or Holiday, Contractor's progress payment applications shall be submitted on the last day of the previous month in which Contractor is open for business (the "Application Due Date"). Time is of the essence with respect to the time for delivery of Contractor's progress payment applications. Owner shall have the right to reject untimely payment applications and require that they be resubmitted (with any corrections necessary) on the next Application Due Date.

Contractor's progress payment applications will utilize forms approved by Owner (sworn to if requested by Owner). Owner may require Contractor to submit separate invoices for Work performed under the Contract Amount and for Work performed pursuant to Change Orders (which are defined in Section 5). All such applications shall be prepared and organized so that the backup documentation for each line item and for each Change Order is separately provided for Owner's ready reference and review, shows in detail and as completely as possible the portion of the Work done by Contractor, states that all claims, obligations and liabilities created or incurred in the performance or doing thereof have been paid, and includes the waivers and releases required by this Section 1. Each progress payment application for work performed under a Change Order shall include, in addition to other documentation required by this Contract, a copy of the work authorization and the resulting Change Order, both bearing Owner's authorized signature. Owner may require Contractor to furnish in support of any progress payment application: (a) original payrolls, and affidavits with respect thereto; (b) all receipted bills; (c) a complete list naming all persons or entities having furnished labor, services, fixtures, equipment, materials, and other work to or for use in the Project and showing the sums properly due to each of such persons or entities through the cutoff date for the application for payment; (d) a list of all materialmen supplying materials used by Contractor and of all separate contractors of

Contractor; and (e) such other information as may reasonably be required by Owner. Each request for payment shall constitute a representation by Contractor to Owner that, to the best of Contractor's knowledge, information, and belief, the design and construction have progressed to the point indicated; the quality of the work covered by the application is in accordance with this Contract and the Contract Documents; and Contractor is entitled to payment in the amount requested.

Contractor's properly documented and completed progress payment application will be considered approved and certified fourteen (14) days after its timely receipt by Owner unless, before that time, Owner determines that grounds for withholding exist as provided in A.R.S. § 32-1129.01.D1 and issues a written statement ("Deficiency Notice") detailing those items covered by the application that are not approved and certified. The Deficiency Notice may be given in any reasonable manner, including handwritten annotations on a copy of the payment application returned to Contractor. Owner shall not be obligated to perform an exhaustive or intrusive investigation after receipt of Contractor's progress payment application. Owner's failure to issue a Deficiency Notice shall be without prejudice to Owner's right to later modify or amend a Deficiency Notice previously given or issued, in whole or in part, based on mistake, newly discovered information, or other grounds permitted by law, upon the issuance of a written amendment to any previously given approval or Deficiency Notice and such amendment shall apply to any application for progress or final payment that is under consideration at the time of the amendment. Any Deficiency Notice shall be deemed issued when deposited with the U.S. Postal Service addressed to Contractor, faxed to Contractor (with electronic confirmation of receipt), or personally delivered to Contractor.

Sums otherwise payable to Contractor will be reduced by (a) retention in the amount of ten percent (10%) and, also, (b) by any withholding of such sums as are permitted, pursuant to A.R.S. § 32-1129.01.E, to pay the direct expenses Owner expects to incur on account of the items identified in the Deficiency Statement. This retention shall be held as additional security for performance of Contractor's obligations, and may be applied by Owner to pay any back charges, setoffs or other amounts owed by Contractor to Owner. Any retention not so applied shall be released to Contractor at the time of final payment.

Provided that the Work has been one hundred percent (100%) completed, Contractor may submit an application for final payment. It is agreed that the Work shall not be deemed one hundred percent (100%) completed until Owner has received a Final Letter of Acceptance from the governmental agency that issued the building permit for the Project and the Work has been accepted by Owner. The application for final payment shall be in such form as Owner may reasonably require and shall be accompanied by: waivers and releases on final payment required by this Section 1; as-builts, warranties, manuals and other close out documents required by the Plans and Specifications; proof of compliance with notice, submittal and approval requirements applicable to the Work; proof of Contractor's compliance with its insurance, occupational health and job safety, and other obligations under this Contract; and such other documents substantiating the particulars of Contractor's application for payment as may be reasonably required by Owner. Final payment for the Work shall be paid to Contractor thirty (30) days after Contractor has accomplished one hundred percent (100%) completion, as defined above, and Owner approves and certifies all Work. Owner may deduct sums from such final payment sufficient to cover expenses Owner has incurred or reasonably expects to be incurred, including attorneys' fees and litigation expenses, on account of items identified in any Deficiency Notices or amendments thereto, that have been issued pursuant to the terms of this Contract. The acceptance of final payment shall constitute a waiver of all claims by Contractor except those previously made in writing and still unsettled.

With each application for progress payment Contractor shall submit its conditional waiver and release for the current application together with Contractor's unconditional waiver and release showing payment through the most recent cutoff date for which Owner has paid Contractor directly or by joint check(s). Owner prefers that

¹ (a) unsatisfactory job progress; (b) defective construction work or materials not remedied; (c) disputed Work or materials; (d) failure to comply with material provisions of the Contract Documents; (e) failure to submit a full, complete and accurate progress payment applicable for each payment made or to be made and/or submission of inaccurate or untrue information, documents or materials, with or as a part of any progress payment application; (f) third-party claims or reasonable evidence that a claim will be filed; (g) failure of Contractor or a subcontractor or other lower tier sub-subcontractor or vendor to make timely payments for labor and materials; (h) damage to Owner; or (i) reasonable evidence that the construction cannot be completed for the unpaid balance of the Contract

Contractor also submit unconditional waivers and releases for the current application from all subcontractors, suppliers, and other persons and entities who have furnished labor, materials, equipment, tools, fixtures, services or other work to Contractor or for the Property and the Project (collectively "Lower Tier Claimants"), and if these accompany the Contractor's application the Owner will make the progress payment payable directly to the Contractor. If the Contractor does not provide such unconditional waivers and releases the Owner will make the progress payment by means of one or more joint checks to Contractor and all Lower Tier Claimants, subject to the following conditions: (a) that the Contractor will provide a list of all Lower Tier Claimants to whom it owes sums for whom money is owed, and such list shall be deemed a warranty and representation that the list is complete and accurate; and (b) that the Contractor's next application for payment shall be accompanied with unconditional waivers and releases from all of Contractor's Lower Tier Claimants through the cutoff date for which the Owner made such progress payment. In the event Owner elects to issue one or more joint checks, the Owner shall have the right to determine the number of such joint checks and their respective amounts, in Owner's sole and subjective discretion. Contractor acknowledges and agrees that Owner shall have the right to issue one joint check naming Contractor and all of its Lower Tier Claimants as joint payees. The Owner may impose such additional conditions and take such additional actions with respect to the issuance or withholding of such joint checks, and the payees and the amounts thereof, as it deems necessary to protect the Owner, the Property, and the Project.

With its application for final payment Contractor shall submit Contractor's conditional waiver and release on final payment together with statutory unconditional waivers and release on final payment from all Lower Tier Claimants, and all such waivers and release on final payment shall show payment through the cutoff date of final completion without any disputed claims.

All waivers and releases on progress payment and on final payment shall conform with the applicable form listed in A.R.S. § 33-1008, and will be in form and substance otherwise acceptable to Owner and to any lending institution providing financing for the Project. No progress payment or final payment otherwise payable shall be due until Owner is satisfied it has received all waivers and releases from Contractor and its Lower Tier Claimants necessary to ensure that the Owner, the Project and the Property are and will be free from claims and liens. Contractor agrees that with respect to any application for progress payment or final payment, the Owner may communicate directly with any Lower Tier Claimant to verify account balances, deliveries, claims, and other matters applicable to the Project.

Notwithstanding anything in this Contract to the contrary, Contractor shall not be entitled to any payment under this Contract until Contractor's application, accompanying backup, waivers and releases, and other documentation are approved by Owner as meeting the requirements of this Contract.

Title to all material and Work for which progress payments have been made shall vest in Owner, but this provision shall not be construed as relieving Contractor from Contractor's sole responsibility for all materials and Work upon which the payments have been made or for the restoration of any damaged Work. Neither shall this provision be construed as a waiver of the right of Owner to require fulfillment of all of the terms of this Contract. It is understood and agreed that no payments to Contractor shall operate as an approval of the Work or materials or constitute a waiver or acceptance of defective materials or faulty workmanship or other failure of performance of Contractor.

Contractor shall use the sums advanced to it by Owner solely for the purpose of performance of the Work. All payments received by Contractor as payment for labor, professional services, materials, machinery, fixtures, equipment, tools or other items in connection with the Work shall be deemed for all purposes to be received in trust and shall be held by Contractor for the benefit of the person or entities furnishing such labor, professional services, materials, machinery, equipment, fixtures, tools, or other items and such monies shall neither be diverted nor used for any purpose other than to satisfy the claims of such persons and shall be paid when due to the person or persons entitled thereto. The provisions of this trust agreement are for the benefit not only of the person entitled to such funds but also for Owner. Contractor recognizes that Owner will be damaged by Contractor's breach of this trust agreement, therefore, it is agreed that the Owner shall be deemed a secondary beneficiary of said trust.

Contractor agrees that no mechanic's lien or other claim or claims shall be filed or maintained by Contractor against the Property on account of any Work done or materials furnished under this Contract. Contractor shall promptly pay all valid bills and charges for its materials and labor and shall hold the Property, the Project and Owner free and harmless from any liens, stop notices, or bonded stop notices arising from Contractor's Work. Upon notice to the Owner that any lien, stop notice, or bonded stop notice has been recorded or given in connection with the Project. Owner may retain, out of any amount due or to become due the Contractor, one hundred fifty percent (150%) of the face amount claimed in the lien, stop notice, or bonded stop notice received by Owner (the "Claim") together with any additional sums Owner considers necessary to protect Owner from loss or expense arising from such lien, stop notice or bonded stop notice. The Owner will provide Contractor with a copy of the lien or notice that Owner has received, If the Contractor does not, within ten (10) days after receipt of the Claim, give the Owner written notice that the Contractor intends to dispute it, the Contractor shall be considered as assenting to the Claim which may be paid by the Owner. If the Contractor gives the Owner written notice that the Contractor intends to dispute the Claim the Contractor shall within ten (10) days after receipt of the notice, at the Contractor's expense, cause to be recorded any and all bonds necessary to release and discharge the lien and/or to result in release of funds held in response to the stop notice or bonded stop notice as provided by statute including, but not limited to, A.R.S. § 33-1003, 33-1004 and/or 33-1062. If the Contractor fails to record such bond within ten (10) days after receipt of notice, the Owner may obtain and record such bond and deduct all resulting expenses from amounts otherwise due to the Contractor.

2. Schedule of Performance by Contractor. Contractor agrees to commence the Work immediately after notification by Owner. At the commencement of the Work, Contractor shall notify Owner of the names of the material houses furnishing his materials, and the names of all subcontractors who will perform any of the Work. Contractor agrees not to withhold the Work or to hinder or delay other contractors or workmen from performing their Work.

Upon receipt of a notice to commence from Owner Contractor agrees to perform the Work within the time periods designated in Schedule "A" of this Contract (and revised in the Bid Addenda).

No extension of time, for any cause whatever, shall be claimed by Contractor or to be made to him, unless Contractor shall have made written request to such extension within seventy-two (72) hours after the cause for such extension occurs and unless Owner and Contractor have agreed in writing upon the allowance of additional time. Owner shall not be liable to suit for breach of this Contract by reason of any delay occasioned or caused by Owner.

3. Inspection and Progress Reports. Owner, any authorized lender or architect and/or their representatives shall at all times have access to the Work for inspection purposes wherever it is in preparation or progress. If any Work is covered up without approval or consent of Owner, it must, if required by Owner, be uncovered for examination at Contractor's expense.

Contractor shall furnish such periodic progress reports on the Work as may be requested by Owner, including information on the status of materials and equipment under this Contract which may be in the course of preparation or manufacture.

4. Contract Documents: Standard of Performance. "Contract Documents" include this Contract, Schedule "A", Schedule "B", Schedule "C", and all addenda attached hereto, all drawings, plans, specifications (including addenda thereto) related to the Project, any lender's qualifications and requirements applicable to the Project, all general and supplementary conditions of the Contract agreed upon, in writing, by the parties, any manufacturer's requirements and specifications as to any manufactured items incorporated in the Work, and all other documents pertinent to the Project. All Contract Documents have been and are available to Contractor for inspection and reference. The requirements of the Contract Documents are incorporated into this Contract by this reference. Contractor warrants and represents that he has read and is familiar with all matters specified in all Contract Documents and agrees that he can and will fulfill them under this Contract and for the Draw Amounts. Contractor warrants that Contractor's Work and materials shall be: (a) performed and supplied in accordance with all applicable building and construction codes and standards of workmanship; (b) in strict and absolute accordance with the Contract Documents; (c) free from defects; (d) fit for the Owner's intended use; and (e) in compliance with all

applicable laws. If there is any inconsistency between any of these requirements, the highest and most stringent standard shall govern.

5. Changes and Extras. Contractor shall not be eligible for or receive payments of any kind on account of claimed additions or extras to the Draw Amounts for change order work, extra work, delay or any other claims ("Extra Work") whatsoever unless Contractor is in receipt of (a) a written work authorization issued before Extra Work was undertaken; and (b) an amendment to this Contract specifying the amount by which the Draw Amounts are to be revised and which amendment signed by an authorized agent of Owner (such amendment signed by the Owner is referred to in this Contract as a "Change Order").

Contractor shall not make changes in any of the Contract Documents at any time without the express written consent of Owner. Upon receipt of written and properly signed Change Orders, executed by Owner and Contractor authorizing any changes, Contractor shall promptly proceed to execute such changes. No changes, deviations, omissions or additions to any Contract Document shall be made by Contractor without specific written authorization from Owner.

Contractor shall promptly and before conditions are disturbed, notify Owner in writing of previously unknown physical conditions at the Project of an unusual nature differing materially from the conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract, which physical conditions either were not or, in the exercise of care, could not have been discovered by Contractor. Owner shall promptly investigate the conditions, and if Owner finds that such unusual conditions do exist, Owner may propose such written changes in the Contract Documents as Owner, in its sole discretion, determines to be appropriate to meet such unusual conditions.

All labor, materials and/or equipment furnished by Contractor shall be deemed to be required for the performance of the Work and included in the Draw Amounts, even though such labor, materials and/or equipment are not specifically required or demanded in this Contract or the Contract Documents, excepting only when specific written authorization for a revision to the Draw Amounts has been executed by Owner.

Contractor acknowledges that only the person executing this Contract on behalf of Owner shall have the authority to modify any terms and conditions of this Contract.

6. Independent Investigation by Contractor. Contractor has satisfied himself, by his own investigation and research, as to all the conditions affecting the Work and materials to be furnished and as to the meaning and intention of the Contract Documents and basing his conclusion to execute this Contract on such independent investigation (without regard to any estimate or information provided by Owner), proposes to complete the Work as provided by the terms of this Contract.

7. Protection of Persons and Property; Safe Work Environment. Contractor shall be solely responsible for preventing injury, damage, or loss to persons or property resulting from the Contractor's Work. Contractor shall at all times provide proper warnings, barricades, trench covers, danger signals, covered lights, traffic and safety controls, and all other measures and devices necessary to prevent injury, damage or loss to: (a) the employees, independent contractors, invitees, licensees, agents, and representatives of Owner, Contractor, and other persons who may be affected thereby and their respective personal property; (b) the Property, including the Work itself, and the materials and other property of other trades; and (c) property adjacent to the Project that may be damaged by the Work. Further, Contractor shall also maintain a safe working environment, in full compliance with all applicable federal, state and local statutes, rules, regulations, ordinances and other laws relating to occupational health and safety and drugs in the work place.

8. Insurance and Special Indemnity.

A. Insurance. Contractor shall at all times carry workmen's compensation insurance, at statutory levels of coverage, covering all of its employees engaged in the Work, commercial general liability insurance and automotive public liability and property damage insurance covering Owner as an additional named insured (utilizing

ISO endorsement form CG2010 (11/95), including liability coverage for all: (a) operations; (b) subcontract Work; (c) contractual obligations, (d) product or completed operations, (e) all owned vehicles, and (f) hired and non-owned vehicles. Such insurance, which must have a Best Rating of A-VII or better, shall be in amounts designated in writing by Owner, and with endorsements, deductibles, deletions of exclusions, and insurance companies satisfactory to Owner. Owner may require, in Owner's discretion, similar coverage from Contractor's subcontractors.

Before Contractor performs any Work or prepares to perform Work at the Project, Contractor shall furnish certificates of insurance evidencing such insurance coverage together with the original endorsements naming Owner as an additional named insured. Such certificates and endorsements shall provide that the insurance is in force and will not be canceled without thirty (30) days written notice to Owner. Contractor shall maintain, at Contractor's expense, all such insurance coverage in force until the Work is completed and accepted by Owner. The requirement for carrying such insurance shall not derogate from the provisions for indemnification of Owner by Contractor under Subsection B of this Section 8.

B. Special Indemnity. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Owner and its officers, directors, employees, representatives, agents, invitees and licensees (individually and collectively referred to as "Owner"), for, from and against any and all liens, claims, demands, causes of action, damages (compensatory and consequential), judgments, fines, penalties, settlements and all other losses arising from the performance or nonperformance of this Contract (hereinafter collectively referred to as "Claims") and all attorneys' fees, consultant fees, expert fees, court costs (whether or not taxable by statute) and expenses incurred by Owner in the evaluation, settlement and satisfaction thereof. This indemnity is in addition to and shall not be deemed to limit any other indemnity given by Contractor, and extends to the maximum extent permitted by law, and includes, but is not limited to, any Claim, just or unjust, of any kind, nature or description whatsoever, whether sounding in tort, contract (including breach of this Contract), equity, the alleged violation of a civil or criminal law, or any other theory of liability, and whether the Claim is based on an alleged death, personal injury, sickness, property damage (including property damage to the Work), patent infringement, copyright infringement, loss of use and all other economic loss, release of a petroleum byproduct or other substance regulated by applicable law, legal violations or other claimed damages. This indemnity shall extend to the fullest extent permitted by law and shall be enforceable even if Owner's active or passive conduct was partly responsible for the Claim, but Contractor shall not be required to indemnify Owner for Claims resulting from the sole negligence or fault of Owner. All obligations of Contractor to Owner arising out of this indemnification clause shall bear interest as set forth hereinafter, with interest to accrue from the date that Owner makes any payment until repaid by Contractor. This indemnity shall apply without regard to whether the Claim is asserted by a public or private claimant and whether in an investigative, judicial or administrative proceeding, civil or criminal. Contractor's obligations under this indemnity shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts. Owner shall recover from Contractor all attorneys' fees and expenses, whether or not taxable as costs, incurred in connection with enforcing this indemnity provision.

9. Compliance with Laws. In addition to any laws referenced elsewhere in this Contract, Contractor shall comply with all federal, state, county and local statutes, rules, regulations, ordinances, executive orders and other legislative or executive requirements (collectively, "Laws") applicable to the work including, but not limited to those pertaining to occupational health, safety, building codes, construction standards, licensure, social security, employment, workers compensation, wages, payrolls, health, discrimination, fair employment, equal opportunity, civil rights, storm water, solid wastes, hazardous wastes, grading, air pollution, water pollution, waste disposal, oils, petroleum, native plants, archeological ruins, human remains, cultural resources, land use, historic preservation, endangered or threatened species, navigable waters, waters of the United States and tributaries thereof, dry washes, and all other laws applicable to the Work. The Work shall meet with the approval and pass the inspection of all governmental bodies having authority where the Work is to be performed or materials are to be furnished. The Work is not to be deemed complete until final inspection is made and final written approval is given by such governmental bodies. The plans and/or specifications shall be deemed to incorporate the requirements of all applicable ordinances, regulations, or other laws of any governmental authority. It is to be conclusively presumed that Contractor is familiar with such ordinances, regulations, or other laws and the Work is to be performed and the materials are to be

furnished in accordance with such ordinances, regulations or other laws regardless of the provisions of any plans and/or specifications. Contractor shall obtain all necessary permits, approvals and licenses for the construction of the Project as contemplated herein. Contractor shall incorporate this provision in all of its subcontracts.

10. Warranty and Correction of Work. Contractor warrants that all materials and equipment furnished and incorporated by him in the Work shall be new unless otherwise specified and agreed by Owner, and that the Work shall be of good quality, free from faults and defects, and in conformance with the Contract Documents and generally accepted trade practices. Contractor agrees, at his sole cost and expense, to promptly correct all Work and replace all equipment and material which do not conform to any applicable law, ordinance or regulation or to any specification of the Contract Documents, or which are not acceptable to Owner, or any lender, architect or any other person or entity authorized to inspect or approve the Work. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Contract Documents. The decision of Owner as to the acceptability of the workmanship or materials furnished by Contractor under this warranty shall be final and binding upon the Contractor.

Upon the failure of Contractor to make any corrections within seven (7) days of notification by Owner of a defect in Contractor's work or materials, the Owner may, at Contractor's expense, furnish such materials, equipment, labor or other work as may be necessary to make all corrections necessary to correct such defective work or materials. Contractor shall also be liable for any damage to other work resulting from such defects.

11. Clean Up. Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by performance of the Work, and upon completion of the Work and at each stage of it, Contractor shall remove all of the rubbish, tools, scaffolding, surplus materials and other articles in, on or about the Project and shall leave his Work "broom clean." In the event of failure of Contractor so to do, Owner may at its option and without waiver of such other rights as Owner may have, treat all unremoved items as abandoned property. In such event, Owner may, at its option, request that Contractor return to the Project and repair, replace, clean and pick up all such items, and if Contractor fails to do so within three (3) days, Owner may do so and charge the cost to Contractor. Contractor is expressly prohibited from burning or burying any excess materials at the Project. All excess materials will be removed to property owned by Contractor or to a Maricopa County Department of Health Services approved disposal site.

Contractor shall maintain the Project in as "dust free" condition as possible. When requested by Owner or governmental authorities Contractor will perform whatever remedial steps are requested to cause the amount of dust created by Contractor's activities to be brought into line with Maricopa County Department of Health Services standards.

12. Performance and Payment Bonds. If required in writing by Owner, the Contractor shall provide performance and payment bonds in the amount of one hundred percent (100%) of the Draw Amounts plus applicable sales taxes as described Section 31, in forms which are satisfactory to Owner. Should Owner so elect, this Contract shall be contingent upon Contractor qualifying for such performance and payment bonds. The cost of the performance and payment bond, if required, shall be at Owner's expense.

13. Supervision. At all times during progress of the Work, Contractor shall have competent supervision on the Project with authority to act on behalf of Contractor. Contractor shall provide adequate workmen classified as "skilled" to perform the Work and shall immediately remove from the Project any employee whom Owner deems incompetent, careless, insubordinate or otherwise objectionable or that is under the influence of drugs or alcohol.

14. Acts Beyond Control of Owner. If, as a result of fire, earthquake, other acts of God, war, strikes, picketing, boycotts, lockouts or other causes beyond the control of Owner, Owner shall consider it inadvisable to proceed with the Work, Contractor shall, upon receiving written notice from Owner, immediately discontinue performance of the Work until such time as Owner deems it advisable to continue. Contractor shall resume performance of the Work promptly upon receiving notice from Owner to do so. Contractor shall not be entitled to any damages or compensation on account of any such cessation of performance as a result of any causes beyond the control of

Owner. In the event of such discontinuance, Contractor shall be paid to the date of such discontinuance in accordance with the Draw Amounts.

15. Use of Owner's Equipment. Contractor agrees that the use by Contractor of any of Owner's equipment, trucks, tools, scaffolding, rigging, blocking, hoists or any other item given, rented, loaned or otherwise provided to Contractor by Owner shall be with the understanding that Contractor uses such items at his own risk and acquired the same "as is." After Contractor has satisfied himself upon examination as to the condition of such items, Contractor does hereby assume all responsibility for and hold Owner harmless from and against any claims or damages whatever resulting from the use of them, whether such damage results to himself, his employees or the Property or to others, to the employees of others or to the property of others. Contractor further agrees to return such equipment or other items to Owner in good condition and repair. Cost of necessary repairs shall be charged to Contractor.

16. Events of Default and Remedies. The following shall constitute events of default by Contractor:

- (a) Failure to perform or observe any provision of this Contract or to perform the Work diligently, properly and promptly;
- (b) Failure to pay any bill or obligation incurred in connection with the performance of the Work;
- (c) Failure to perform his maintenance obligations under this Contract;
- (d) Failure to comply with written instructions of Owner;
- (e) Adjudication as a bankrupt;
- (f) General Assignment for the benefit of creditors;
- (g) Placement in receivership due to insolvency;
- (h) Refusal, failure or neglect to supply sufficient skilled workmen or proper materials;
- (i) Attachment of assets or appointment of a receiver for such attachment;
- (j) Labor problems which prevent the Contractor from performing its Work in accordance with the time periods designated in Schedule "A" or which interfere with the performance of Work by any other Contractor on the project; and/or
- (k) Pledge or assignment (as defined in Section 18) of the Contract or the Work, by Contractor, without Contractor obtaining the prior express written consent of Owner.

Upon default by Contractor, Owner may, at its option, without prejudice to any other legal right or remedy, upon twenty-four (24) hours written notice, terminate this Contract without any further obligation or liability whatsoever, and/or complete the Work by whatever method Owner may deem expedient. If the cost to Owner of completing the Work shall exceed the unpaid balance of the Draw Amounts due to Contractor, Contractor shall, upon demand of Owner, pay the difference to Owner. The term "cost" as used in the preceding sentence, shall include expenses incurred by Owner for furnishing materials and labor necessary to complete the Work, for attorneys' fees and for any damage sustained by Owner by reason of Contractor's default, plus an amount equal to fifteen percent (15%) of the "cost" described in this Section for general overhead, plus ten percent (10%) of the "cost" described in this Section as profit on any and all of such expenses, plus the Liquidated Damages (as Defined in Schedule "A", if applicable) times the number of days from the date the Work initially was to be completed by Contractor according to Schedule "A" and the actual date the Work is completed by Owner; and Owner shall have a lien upon all materials, tools and appliances of Contractor at the Project to secure the payment of such cost.

In addition to the above, or in alternative to the above, Owner may, at its option, without prejudice to any other legal right or remedy, withhold from any sums otherwise payable to Contractor any amount deemed necessary by Owner to protect Owner from (a) defects in the Work; (b) claims likely to be filed; (c) failure of Contractor to pay any obligation or liability whatsoever incurred by him; (d) a reasonable doubt that this Contract can be completed by Contractor for the balance unpaid; (e) damage to the Work of another contractor; or (f) any sum reasonably required to insure the true and faithful performance by Contractor of this Contract, including maintenance and warranty obligations.

In addition to the above, it is expressly agreed that if any Work is delayed by reason of Contractor's failure to perform, all sums due under this Contract may be withheld until Contractor shall have performed and Contractor shall have paid for all costs caused by the delay. When the ground or grounds upon which payment is withheld are removed, payment then will be made of any amounts withheld and due.

Contractor hereby specifically authorizes Owner to obtain such labor and material and to pay such sums as are necessary in Owner's opinion to obtain the proper performance of the terms of this Contract and further authorize Owner to withhold from Contractor any payments due Contractor and/or to collect from Contractor such sums paid.

Contractor hereby grants to Owner a lien upon all his chattels at the Project, should Owner deem it necessary to withhold money hereunder, and if the sums withheld are not sufficient to protect Owner, Owner may, without any notice whatsoever, take possession of all such chattels, and Contractor shall deliver possession of all such chattels to Owner upon Owner's request.

Owner may, at its option, for the purpose of completing the Work under the circumstances contemplated by this Section, take possession of all the equipment, materials, tools and appliances of Contractor without any cost to Owner.

In addition to the above, Owner reserves the right to terminate this Contract for Owner's convenience and without cause upon a forty-eight (48) hour written notice. In the event of such termination, Contractor shall be paid to the date of such discontinuance in accordance with the Draw Amounts.

17. Contractor. The parties understand that Contractor is an independent contractor and is independent of Owner in the performance of the Work and is not subject to the rule or control of Owner, but is engaged only in the performance of the Work, and is subordinate to Owner only in effecting a result in accordance with the Contract Documents.

18. Assignment of Contract. Unless otherwise agreed to in writing by Owner, Contractor shall not contract any portion of the Work to be performed by any third parties and shall not pledge or assign this Contract or any payment due or to become due hereunder. If Contractor is a corporation, limited liability company, partnership, limited partnership, or joint venture, a change in the ownership of forty percent (40%) or more of any class of ownership interest shall be deemed an assignment prohibited hereby. If, notwithstanding this Section, Contractor shall so assign or pledge this Contract or the Work without obtaining Owner's prior express written consent to such pledge or assignment, then at any time thereafter Owner may, at its option, terminate this Contract in the manner and on the terms described in Section 16.

Owner reserves the right to transfer and assign this Contract or any portion of it to any corporation, individual or partnership which it may designate. The parties hereto expressly agree that Owner may be dissolved and that its assets may be transferred to any individual, partnership or corporation. In the event of such dissolution and transfer, all liability to Contractor of Owner or of Owner's individual officers, directors, shareholders and/or members is hereby waived by Contractor who will look only to such assignee.

19. Sole Contract. This Contract is the sole and only Contract between the parties hereto, and no person on behalf of Owner has any authority whatsoever to make any Contract, representation or warranty as to the Work or modification of this Contract except the executor of this Contract. In the event there exists a separate bid, estimate,

letter of intent or contract prepared by Contractor or Owner, signed or unsigned, in addition to this Contract, such other bid, estimate, letter of intent or contract shall be considered replaced by this Contract and no longer in effect.

All negotiations and Contracts prior to the date of this Contract are merged herein, and there are no Contracts, verbal or otherwise, other than those contained herein.

Any additional or supplementary Contracts shall be valid only when in writing and shall then become a part of this Contract and subject to the provisions herein contained. No oral statement by any person shall in any manner modify or otherwise affect the terms of this Contract.

20. Title. The title to all Work completed and in the course of construction and all materials on the job shall, as between Owner and Contractor, be in Owner.

21. Waiver. In the event Owner shall, one or more times, waive a covenant or condition of this Contract, Owner shall not be deemed to have consented to any further waiver, modification or breach of the same or any other covenant or condition.

22. Notices. Any notice to any party under this Contract shall be in writing or electronic facsimile, shall be effective on the earlier of (a) the date when received by such party, or (b) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to the address of such party set forth herein, or to such other address as shall have previously been specified in writing by such party to all parties herein.

23. Severability. If any provision of this Contract is declared void or unenforceable, such provision shall be deemed severed from this Contract, which shall otherwise remain in full force and effect.

24. Additional Acts and Documents. Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Contract.

25. Authority. Each of the parties hereto represents and warrants to each other party hereto that this Contract has been duly authorized by all necessary action and that this Contract constitutes and will constitute a binding obligation of each such party.

26. Attorneys' Fees. In the event suit is brought or an attorney is retained by any party to this contract to enforce the terms of this Contract or to collect any money due hereunder, or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, travel expenses, consultants' fees, exhibit preparation costs, and all other related expenses incurred in connection therewith, without regard to whether such expenses are taxable as costs by statute.

27. Time. Time is of the essence of this Contract and each and every provision hereof, and payment shall be conditional upon prompt performance of the Work as required herein. Any extension of time granted for the performance of any duty under this Contract shall not be considered an extension of time for the performance of any other duty under this Contract.

28. Captions. Captions and Section headings used herein are for convenience only and are not a part of this Contract and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Contract.

29. Governing Law. This Contract shall be deemed to be made hereunder, and shall be construed in accordance with and shall be governed by, the laws of the State of Arizona, and suit to enforce any provision of this Contract or to obtain any remedy with respect hereto may be brought in Superior Court, Maricopa County, Arizona, and for this purpose each party hereby expressly and irrevocably consents to the jurisdiction of said court.

30. Interpretations. To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa and (b) references to "persons" or "parties" in this Contract shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and all other entities.

31. Privilege Taxes. Contractor shall be regarded as a "Prime Contractor" as defined in A.R.S. § 42-5075 and shall be liable for and undertake all reporting payment obligations with respect to State of Arizona and any County transaction privilege taxes that arise as a result of the performance of the Work under this Contract. With respect to any city taxes, the Owner will provide Contractor with the form of speculative builder exemption certificate attached hereto, and Contractor will not charge or collect from Owner any amount for city or local privilege or other taxes with respect to Contractor's receipts from Owner.

32. Revised Contract Amount/Billing Categories. The Owner and Contractor hereby acknowledge that this is a lump sum contract. The Billing Categories are as follows:

Tartesso Well No. 3	_____
Sales Tax	_____
TOTAL CONTRACT SUM	=====

This Contract, when accepted by Owner shall become and be binding upon Owner and Contractor, their heirs, executors, administrators, successors and assigns, as of this date first above written. It is agreed that the terms and conditions of this Contract supersede and cancel all previous understandings or Contracts, whether written, verbal, or implied.

IN WITNESS WHEREOF, this Contract is executed as of the date first above written.

OWNER:

Tartesso 1261, L.L.C.,
an Arizona limited liability company

By: _____

Its: _____

CONTRACTOR:

ABC Contractor,
an Arizona corporation

By: _____

Its: _____

**Written Declaration from Owner-Builder to
Exempt Subcontractor**

Name of Subcontractor: ABC CONTRACTOR

Address of Subcontractor: 123 MAIN STREET
PHOENIX, AZ 85000

Name of Owner-Builder: TARTESSO 1261, L.L.C.

Address of Owner-Builder: 6720 N. SCOTTSDALE RD., SUITE 220
SCOTTSDALE, AZ 85253

Subdivision/Project: TARTESSO WELL NO. 3

General Description
of Construction
Contracting Activity: WELL EQUIPMENT

In order to comply with the requirements of Section 415(c)(2) of the Model City Tax Code, as adopted by the City of Buckeye (the "City"), which provides a tax exemption for construction contractors performing work for an owner-builder, the undersigned hereby certifies as follows:

- (1) The undersigned is an owner-builder (speculative builder) improving the property for sale.
- (2) The undersigned holds the following valid City privilege tax license for construction contracting as a speculative builder: Lic. No. 20032100
- (3) The undersigned is liable for all privilege taxes due the City for such construction contracting activity.

The undersigned hereby certifies that the above information is true and correct.

Owner-Builder Signature:

PRINTED NAME

SIGNATURE

TITLE

DATE

This Declaration is for tax exemption for City privilege tax only! It is not a certificate for exemption of State transaction privilege tax.